

ORDINANCE NO. _____

ORDINANCE AMENDING THE BUNCOMBE COUNTY CODE OF ORDINANCES
ARTICLE II, AMBULANCE SERVICES OF CHAPTER 22, EMERGENCY SERVICES

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- WHEREAS, North Carolina General Statutes §153A-250, Ambulance Services, authorizes counties to franchise ambulance services provided in the county;
- WHEREAS, the Buncombe County Board of Commissioners adopted Ord. No. 19739, Ambulance Services, in December 1990;
- WHEREAS, no major changes have occurred in the state law in the intervening years, but insurance coverage needs have increased and licensing requirements and rules of the North Carolina Office of Emergency Medical Services have been modified;
- WHEREAS, this Board is of the opinion that it is in the best interests of the citizens and residents of the County to amend the Ambulance Services ordinance and to make the recommended changes to the existing ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. The Buncombe County Code of Ordinances Article II, Ambulance Services, of Chapter 22, Emergency Services, is hereby established as follows:

Chapter 22 - EMERGENCY SERVICES

ARTICLE II. AMBULANCE SERVICES

DIVISION 1.

Sec. 22-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ambulance means any publicly or privately owned motor vehicle that is specially designed, constructed, or modified and equipped, and is intended to be used for and is maintained or operated for the transportation upon the streets and highways in this state of persons who are sick, injured, wounded, or otherwise incapacitated or helpless.

Ambulance service means a public or privately owned enterprise that is engaged in the transportation of patients to emergency and/or nonemergency medical facilities for a fee.

Approved means approved by the state medical care commission pursuant to the rules and regulations promulgated pursuant to North Carolina General Statutes.

Board means the Buncombe County Board of Commissioners.

Convalescent means the transportation of sick or infirm patients, having a known, nonemergency medical condition, on a scheduled basis between facilities or between a residence and a facility. Convalescent ambulances shall not be used in place of any other category of ambulance.

County means Buncombe County.

Dispatcher means a person who is available at all times to receive requests for emergency services and to dispatch emergency services.

Emergency and emergency transportation service means the operation of an ambulance in order to provide medical care and transportation of a patient who is in need of immediate medical treatment in order to prevent loss of life or further aggravation of physiological or psychological illness or injury.

Emergency medical technician (EMT), EMT Intermediate and EMT paramedic means an individual who has completed the minimum program for certification and is so certified by the state.

First responder means the first dispatched medical or rescue aid to arrive at the scene and provide emergency medical assistance to stabilize the patient while waiting for further medical aid and/or transport.

Franchise means a permit issued by the county to any person or business entity for the operation of a commercial ambulance service.

Franchisee means any person having been issued a franchise by the county for the operation of a commercial ambulance service.

License means any driver's license or permit to operate a motor vehicle issued under or granted by the laws of the state.

Nonemergency transportation services means the transportation by ambulance of a person having an immediate or prompt need for medical treatment or care other than an emergency.

OEMS means the North Carolina Office of Emergency Medical Services which is a section of the Division of Health Service Regulation of the North Carolina Department of Health and Human Services.

OEMS Rules means the rules promulgated and codified in the North Carolina Administrative Code for Emergency Medical Services and Trauma.

Owner means any person or business entity who owns and operates an ambulance service.

Patient means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including any governmental agency other than the United States.

Rescue means situations where the victim cannot escape an area through the normal exit or under his or her own power.

Sec. 22-27. Enforcement.

Under the general supervision of the county manager's office, the Buncombe County Emergency Services Director and Buncombe County Legal Services shall be responsible for ~~the~~ enforcing the regulations contained in this article.

Such duties will include:

- (1) Receive all franchise proposals from potential providers.
- (2) Study each proposal for conformance to this article.
- (3) Evaluate franchise applications and present a recommendation of a grant or denial of franchises to the Board.
- (4) Cause the county safety officer to inspect the premises, vehicles, equipment, and personnel records of franchisees to ensure compliance to this article.
- (5) Recommend the temporary or permanent suspension of a franchise in the event of noncompliance with the franchise terms of this article. Recommend appropriate legal action for the imposition of misdemeanor or civil penalties as provided in this article.
- (6) Ensure by cooperative agreement with other ambulance services the continued service in a district where an ambulance service franchise has been suspended.
- (7) Receive complaints from the public, other enforcing agencies, and ambulance services regarding franchise infractions.
- (8) Recommend improvements to the county which will ensure better medical transportation.
- (9) Maintain all records required by this article and other applicable county regulations.

Sec. 22-28. Penalties for violations of article.

- (a) It shall be a misdemeanor for any person to obtain or receive ambulance service without intending at that time of obtaining or receiving such services to pay, if financially able, the necessary charges. A determination that the recipient of such services has failed to pay for the services rendered for 90 days after the request for payment, and that the recipient is financially able to do so, shall raise a presumption that the recipient of the services did not intend to pay for the services at the time they were obtained or received.
- (b) Violations of this article, or the terms of any franchise granted under this article, shall be a misdemeanor, as provided by G.S. 14-4. Each such violation also shall subject the offender to a civil penalty in the amount of \$100.00 for each separate breach of the franchise or violation of this article. This civil penalty must be paid within ten days after the hearing on the citation has been held as provided in section 22-44(b). If not so paid, such penalty may be recovered by the county as provided by G.S. 153A-123(c). If the civil penalty is not paid within the ten days, as provided for in this subsection, the county may suspend or revoke the franchise.

Sec. 22-29. Territorial jurisdiction; applicability of article.

Pursuant to NCGS Sec. 153A-250, the provisions of this article shall apply to all areas within the geographic confines of the County unless a municipality's area has been specifically excluded by the Board.

Sec. 22-30. Addendums to article.

The board of commissioners may, through appropriate action, amend or expand this article to include other emergency departments or agencies as deemed necessary.

Sec. 22-31 - 22-40. - Reserved.

DIVISION 2.

Sec. 22-41. Requirements of franchisees.

- (a) *Grant of franchise before provision of service.* No person either as owner, agent, employee or otherwise, shall furnish, operate, conduct, maintain, advertise or otherwise be engaged in or profess to be engaged in the business of emergency, nonemergency or convalescent transportation of patients within the county unless the person holds a valid permit for each ambulance used in such business issued by OEMS and has been granted a franchise for the operation of such business or service by the county pursuant to this article.

- (b) *For emergency transportation.* No person shall drive, operate or attend a vehicle being operated as an ambulance for emergency transportation purposes within the county unless ~~he~~ such person holds all necessary and appropriate permits and licenses required by OEMS rules and statutes. No ambulance shall be operated for emergency transportation purposes unless the vehicle is staffed and/or operated in accordance with all applicable OEMS rules and statutes.
- (c) *For convalescent or nonemergency transportation.* No ambulance shall be operated for convalescent or nonemergency transportation service or purposes within the county unless the vehicle is staffed and operated in compliance with protocols consistent with OEMS rules and statutes.
- (d) *Exceptions.* No franchise shall be required, and the provisions of subsections (a), (b) and (c) of this section shall not apply to the following:
 - (1) Any entity rendering assistance to a franchised ambulance service in the case of a major catastrophe or emergency with which the services franchised by the county are insufficient or unable to cope.
 - (2) Any entity operated from a location or headquarters outside of the county in order to transport patients who are picked up beyond the limits of the county, but no such entity shall be used to pick up patients within the county for transporting to locations within the county unless it is rendering assistance referred to in subsection (c) of this section.
 - (3) Law enforcement personnel.
 - (4) Volunteer fire departments, rescue squads or hospitals providing such services.
 - (5) The person that currently holds or is hereafter awarded the ambulance service contract by the Veterans Administration Hospital at Oteen, North Carolina for transports to and from Veteran's Administration only.
 - (6) Medical air ambulances or helicopters which provide emergency medical transportation services.

Sec. 22-42. Application; contents.

Application for a franchise to operate ambulances in the county shall be made upon such forms as may be prepared or prescribed by the county and shall contain:

- (1) The name and address of the applicant, who shall be the owner of the entity and any ambulances to be operated under the franchise.
- (2) The trade or other fictitious names, if any, under which the applicant does business, along with a certified copy of an assumed name certificate stating such name, or a certified copy of the articles of incorporation stating such name.
- (3) A resume of the training and experience of the applicant in the transportation and care of patients.

- (4) A description of each ambulance owned or operated by the applicant, including make, model, vehicle identification number and OEMS permit number.
- (5) The location and description of the places from which it is intended to operate, including the address of the location in Buncombe County where the applicant will maintain a business office for transaction of business.
- (6) Audited financial statement of the applicant as the same pertains to the operations in the county, in such form and detail as the County may require.
- (7) A description of the applicant's capability to provide 24-hour coverage, seven days per week.
- (8) An official criminal record of the applicant if a sole proprietorship, of any partner if a partnership, or of any and all officers, directors or managers of the applicant if a corporation or other business entity.
- (9) A statement that the applicant will not discriminate as to any person with regard to race, color, religion, sex, national origin, political affiliation, physical or mental disability, age, veteran status, genetic information, sexual orientation, gender identity or any other legally protected class under federal or NC State law.
- (10) Any information the county shall deem reasonably necessary for a fair determination of the capability of the applicant to provide ambulance service in the county in accordance with the requirements of the state and the provisions of this article.
- (11) The application shall be tender with a fee to be determined by the Board during the County's regular budget process.

Sec. 22-43. Granting.

- (a) *Designation of franchise districts.* Prior to accepting applications from applicants for the operation of an ambulance service, the board of commissioners may designate specific service areas as franchise districts. The board of commissioners shall have the authority to redistrict or rearrange existing districts at any time, at their discretion.
- (b) *Hearing; investigation of applicant.* Upon receipt of an application for a franchise, the county, by and through the County EMS and County Legal Services shall schedule a time and place for hearing the applicant. Within 30 days after the hearing, the county shall cause such investigation as it may deem necessary to be made of the applicant and his proposed operations.
- (c) *Conditions.* A franchise may be granted if the Board ~~county~~ finds that:
 - (1) The public will be served by granting the applicant a franchise, consistent with the Article.
 - (2) The application is accurate and, complete.
 - (3) The applicant has provided adequate evidence of its ability to to provide safe, adequate and responsible service, and evidence that no owner, operator, agent or employee of applicant has been debarred from the

Medicare or Medicaid program, or any other public benefit program of the United States or any state.

- (4) The applicant holds all necessary licenses and permits from OEMS, or will be fully qualified to obtain all necessary licenses and permits upon award of the franchise.

Sec. 22-44. Term.

- (a) *Validity; termination; reapplication.* The county may issue a franchise under this article to an owner of an ambulance service, to be valid for a term not to exceed five (5) years to be determined by the county, provided that either party, at its option, may terminate the franchise upon 60 days' prior written notice to the other party. After a notice of service termination is given, the ambulance service shall reapply for a franchise if continued service is desired.
- (b) A franchise may be extended for an additional term of the same number of years for which it was initially granted upon written application, submission of application fee, and certification that the applicant has been continuously in compliance with all County and OEMS requirements and retains all necessary licenses and permits from OEMS.
- (b) *Violation; civil penalty; suspension or revocation.* If any franchisee shall violate or fail to comply with any provision of this article, or a franchise issued under this article, the franchisee shall be cited by the county for such violation or failure to comply. The county, after a hearing pursuant to this citation, may impose a civil penalty of \$100.00 for each separate breach of the franchise, as provided in section 22-28 or may suspend or revoke the franchise. If, upon such hearing, the county shall find that the franchisee has corrected any deficiencies and has brought his operation into compliance with the provisions of this article, the franchise shall not be suspended or revoked, but a civil penalty as provided in section 22-88 may be imposed.
- (c) *Ceasing operations.* Upon suspension, revocation, or termination of a franchise granted under this article, such franchised ambulance service shall immediately cease operations. Upon suspension, revocation, or termination of a person's driver's license or OEMS license or permit, such person shall cease to drive an ambulance or provide medical care in conjunction with an ambulance service, or attend an ambulance. No person shall employ or permit such individual to drive an ambulance or provide medical care in conjunction with an ambulance service.

Sec. 22-45. Inspection of records.

The county may inspect a franchisee's records, premises and equipment at any time in order to ensure compliance with this article and any franchise granted under this article.

Sec. 22-46 - 22-55. - Reserved.

DIVISION 3.

Sec. 22-56. Ambulance franchise.

- (a) *Compliance with applicable laws.* Each franchised ambulance service shall comply at all times with the requirements of this article, the franchise granted under this article, and all applicable state and local laws relating to health, sanitation, safety, equipment, and ambulance design and all other laws and ordinances as well as OEMS rules.
- (b) *Right of control.* Prior approval of the county through the application process shall be required where ownership or control of more than ten percent of the right of control of the franchisee is acquired by a person or group of persons acting in concert, none of whom own or control ten percent or more of such right of control, singularly or collectively, at the date of the franchise. By its acceptance of the franchise, the franchisee specifically agrees that any such acquisition occurring without prior approval of the county shall constitute a violation of the franchise by franchisee and shall be cause for termination at the option of the county.
- (c) *Change of ownership.* Any change of ownership of a franchised ambulance service without the approval of the county shall terminate the franchise and shall require a new application and a new franchise and conformance with all the requirements of this article as upon original franchising.
- (d) *Sale, assignment, mortgaging or transferral.* No franchise may be sold, assigned, mortgaged or otherwise transferred without the approval of the county and a finding of conformance with all requirements of this article as upon original franchising. Each franchised ambulance service, its equipment and the premises designated in the application for all records relating to its maintenance and operation as such shall be open to inspection by the state, the county or their designated representatives.
- (e) *Official entries.* No official entry made upon a franchise may be defaced, removed, or obliterated.

Sec. 22-57. Drivers and attendants.

Standards for drivers and attendants, as developed by State statute, OEMS, and OEMS rules are incorporated in this section by reference.

Sec. 22-58. Vehicles and equipment.

Vehicle and equipment standards, as developed by State statute, OEMS, and OEMS rules are incorporated in this section by reference.

Sec. 22-59. Communications.

- (a) *Two-way communications.* Each ambulance must be equipped with communications devices compliant with Federal and State law which must be in operative condition at all times and which have the capacity of communicating with the county 911 center and local hospitals.
- (b) *Copy of FCC license.* Each ambulance service shall provide the county a copy of the Federal Communications Commission license authorizing the use of the communication equipment owned and operated by that service.

Sec. 22-60. Insurance.

The minimum insurance coverage which the franchisee shall procure and maintain at its sole cost and expense during the term of the franchise is as follows:

- (a) **Worker's Compensation** – at the statutory limits in compliance with applicable State and Federal laws.
- (b) **Employer's Liability** - with minimum limits of \$1,000,000 each accident/\$1,000,000 disease each employee/\$1,000,000 disease policy limit.
- (c) **Commercial General Liability** - covering all operations performed under the franchise with a minimum limit of \$1,000,000 per occurrence with a \$3,000,000 aggregate.
- (d) **Professional Health Care Liability** - covering the franchisee's acts, errors, or omissions in the rendering of or failure to render professional health care services with a minimum limit of \$1,000,000 per occurrence with a \$3,000,000 aggregate
- (e) **Business Automobile Liability** - covering all owned, non-owned, and hired vehicles used in performance of the contract. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per NCGS 20-279.21.
- (f) **Excess or Umbrella Liability** – shall extend an additional \$2,000,000 limit / \$2,000,000 aggregate over the underlying commercial general liability, professional health care liability, and business auto liability insurance. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

The franchisee shall provide the County with certificates of insurance evidencing the above amounts. The liability certificates shall name Buncombe County as additional insured under the policies. Before commencing work, the franchise shall furnish the County with certificates of insurance on an approved form. The certificates shall provide that policies shall not be canceled or changed until thirty (30) days written notice has been given to the County. All insurance shall be procured from reputable insurers authorized to do business in North Carolina.

Providing and maintaining adequate insurance coverage is a material obligation of the franchisee and is of the essence of any franchise. The franchisee may meet its requirements of

maintaining specified coverage and limits by demonstrating to the County that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the County. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Article. The limits of coverage under each insurance policy maintained by the franchisee shall not be interpreted as limiting the contractor's liability and obligations under the contract.

Sec. 22-61. Records and Reporting requirements.

Each franchise shall maintain the following records:

- (1) *Record of dispatch.* The record of dispatch shall show the time the call was received, the time the ambulance was dispatched, the time the ambulance arrived on the scene, the time the ambulance arrived at the destination, the time the ambulance was in service and the time the ambulance returned to base.
- (2) *Trip record.* The trip record shall state all information required in subsection (1) of this section in addition to the patient's address and telephone number, the condition of the patient, the type of medical assistance administered before the reaching hospital, the total trip miles, the schedule of charges, and the name of the attendants and the driver.
- (3) *Daily report log.* The daily report log shall be maintained for the purpose of identifying more than one person transported in any one day.

Reports:

(a) Annually, at least 45 days prior to the anniversary date of the issuance of the franchise, the franchisee shall report to the County in writing and under oath its compliance with this Article, OEMS rules, and applicable state statutes during the previous year.

(b) Monthly, franchisees must submit to the Buncombe County Emergency Services Director a report that details the following information concerning the prior month of operation:

1. Number of requests for ambulance transportation;
2. Number of patients transported;
3. For requests for service scheduled in advance, the percentage of on-time arrivals and the average delay for those calls for an ambulance that did not arrive on time;

4. For requests for service not scheduled in advance (either immediate or as soon as possible) the interval between the time of the requests and the arrival of the ambulance at the location for which the request was made;
5. Written details of any critical vehicle failure (failure of a vehicle after dispatch for service or while transporting a patient);
6. Written details of any vehicle collision after dispatch for service or while transporting a patient; and
7. Number of calls for service deemed to be emergent and referred to a 911 center for disposition.

Sec. 22-62. Rates and charges.

- (a) Within 60 days after the acceptance of the franchise, as provided for in section 22-41, the franchisee shall submit to the county a proposed schedule of rates and charges for the operation of an ambulance service, and shall keep the County advised of current rates.
- (b) No ambulance service shall attempt to collect rates on calls until the patient has reached the point of destination, has received medical attention and is in a condition deemed by the physician fit to consult with the ambulance service, but such service may attempt to collect rates with the family or guardian of the patient once the patient is in the process of receiving medical attention.
- (c) On nonemergency calls, or calls where a person requires transportation to a nonemergency facility, attempts to collect payments can be made before the ambulance begins its trip.

Sec. 22-63. Indemnification.

The franchisee agrees to indemnify and hold harmless the County and any and all of its officers, agents and employees, from any and all liabilities, claims, demands and judgments for damages arising out of any act or omission of the franchisee in connection with the performance of its franchised operations.

Sec. 22-63 - 22-85. - Reserved.

Section 2. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Commissioners hereby declare that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This ordinance is effective upon adoption.

Read, approved and adopted this _____ day of November, 2014.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

Kathy Hughes, Clerk

By: _____
David Gantt, Chairman

APPROVED AS TO FORM

County Attorney